State of California rules Uber driver is employee, not contractor

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The California Labor Commissioner's office ruled Tuesday that former Uber driver Barbara Ann Berwick was misclassified by the company as an independent contractor and should have been an employee. The ruling declared that Berwick was entitled to over $4,000 in unpaid employee expenses.

The ruling highlights the growth of companies classifying their employees as independent contractors to avoid paying pensions, healthcare, and other benefits, while shifting operating expenses onto the backs of workers. Uber is one of the booming “on demand” service companies that use the most extreme form of contract labor.

Like any of the other workers who drive for Uber, Berwick was not compensated for gas, car maintenance, toll charges or any other expenses associated with her job. The Commission ordered Uber to compensate her at the rate of $0.56 per mile for the 6,468 miles she drove while working for them. She is also to be paid $256 for toll charges and $274.12 in interest. Berwick had asked for wages for 470.7 hours she worked for Uber, but failed to provide necessary payment documentation.

Uber immediately appealed the decision to the state court out of concern that other employees will follow suit and that the decision could lead to a reassessment by the IRS of whether Uber should be paying unemployment insurance, Social Security tax and other standard employee expenses.

Uber is a transportation company that uses smart phones and a fleet of drivers to provide taxi service quickly and at low cost. Its business model relies on a large number of drivers that it classifies as independent contractors who get paid for each ride they complete. Companies like Uber classify workers as independent contractors to greatly reduce labor costs by sidestepping the various rights workers have fought for generations.

Other “on demand” companies include competing transit company Lyft, and a variety of delivery companies like Postmates and Instacart. For each of these companies, the customer pays a fee for a specific good or service, the company dispatches the contractor and then pays a portion of the fee to the contractor once the job is complete. The contractors receive no other compensation and are responsible for all expenses they incur.

Uber has grown rapidly with this business model. Its service was launched in San Francisco in 2010, and since then it has grown to operate in 300 cities over 58 countries. Its expected revenue for 2015 is $10 billion. Central to this growth has been a massive expansion of its work force to over 160,000 active drivers.

Other companies that rely entirely on independent contractors have seen significant growth recently. After launching in San Francisco in 2011, Postmates currently averages over 7,000 deliveries a day, and uses thousands of couriers in over 18 cities.

Adelaide Pagano, a lawyer with the firm Lichten and Liss-Riordan, P.C., which is currently involved in class action suits against Uber, Postmates, and several other companies over misclassification, described the difficulties workers who have been misclassified face.

“Workers may not even be making minimum wage,” she wrote, “and the employer has no obligation to assure that they are if the worker is an independent contractor. Many of the workers we’re talking about are bike couriers and drivers who may not be covered by workers’ comp if they are in an accident.”

On a slow day when the number of contractors exceeds demand, drivers or couriers may make less than $5 an hour. In order to earn a living, contractors then push themselves to work 10 or more hours in a row during peak demand periods, like holidays and weekends, without breaks or overtime pay. Moreover, companies can dismiss contractors at any time and for any reason.

The misclassification of employees as independent contractors is most extreme in these “on demand” companies where, outside of a small office staff, all workers are labeled contractors, but this is just part of a broader effort by big business to reduce labor costs.

The same week as the Commissioner's ruling, FedEx settled complaints from employees it had classified as independent contractors for $228 million. FedEx Ground had used independent contractor status to shift the cost of the FedEx trucks, uniforms, scanners, maintenance, insurance, and gas onto the backs of their drivers.

From the auto industry to the oil refineries, in the US and internationally, regular employees are being replaced with cheaper contract workers who comprise one of the most exploited layers in society, with no job security or health benefits while doing some of the most dangerous work.

The Government Accountability Office released a report last April using figures from the Bureau of Labor Statistics and various national surveys to detail the growing role of independent contractors and others with irregular employment. Their latest figures are from 2010 but they sharply demonstrate the shifts in the US economy.

In 2005, some 7.4 percent of the work force were independent contractors, while in 2010 this figure rose to 12.9 percent. In absolute numbers that amounts to a doubling from 10 million to 20 million contractors. These workers have almost no job security with one-in-five saying they had been laid off in the previous year and one-in-four saying they expected to lose their job over the next year. Fully 19 percent of independent contractors had family incomes of less than $20,000, while only 11 percent of full-time workers had incomes that low.

Since 2010, the situation for contractors has only gotten worse. Simply gaining employee status, however will not be enough to defend workers’ living standards. The increasing pressure to reduce labor costs flows from the global economic slump. Where companies are not outright cheating workers by hiring them as contractors, they limit the hours they can work in order to avoid providing benefits, confident that the high level of unemployment will keep their poverty-level openings filled.

Instacart, for example, has begun shifting some of its contractors over to part-time status. To avoid providing health insurance, Instacart strictly enforces a maximum of 30 hours of work each week for each employee. Any more and they would be categorized as full-time and entitled to benefits.